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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,468	02/20/2004	Antonio Battisti	377/9-1912	7434

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EXAMINER

DURAND, PAUL R

ART UNIT PAPER NUMBER

3721

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/783,468	Applicant(s) BATTISTI, ANTONIO	
	Examiner Paul Durand	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, and 8-15 is/are rejected.
- 7) ☒ Claim(s) 4 and 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 6-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are dependant on claim 1, however they claim the limitation of "longitudinal plates". There is no antecedent basis for this limitation in claim 1. This limitation is claimed in claim 2.

Applicant is advised to check the claims for grammatical errors.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 and 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fritz (US 4,902,184) in view of Boscaratto (US 6,787,096).

In regard to claim 1, Fritz discloses the invention substantially as claimed including an apparatus for feeding articles comprised of working means comprised of

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brushes 40 for transporting articles 50 from conveyor 10, collecting means in the form of plate 32 and pushing means 33, which pushes the articles to an output section 20 (see Figs. 1,2 and C2,L8 – C4,L16). What Fritz does not disclose is the use of a guide means, which changes that distance between the articles. However, Boscaratto teaches that it is old and well known in the art to provide guide plate 14 which moves along guides 17, and which changes the distances between objects for the purpose of optimizing manufacturing space (see Fig.1 and C3,L60 – C4,L29). Furthermore, while Fritz discloses only one working station, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided plural working stations, since it has been held that mere duplication of the essential working parts of a device requires only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Fritz with the guide means as taught by Boscaratto for the purpose of optimizing manufacturing space and to have a plurality of working station for the purpose of increasing throughput.

In regard to claims 2 and 3, the modified invention of Fritz discloses the invention substantially as claimed including guide plate 14, with a plurality of movable gripping cups 11 for the purpose of holding and adjusting the distance between units (see Boscaratto, Fig.1 and C3,L60 – C4,L29).

In regard to claim 5, the modified invention of Fritz discloses the invention substantially as claimed except for the ability to adjust the spacing of the magazines. However, it would have been obvious to one having ordinary skill in the art at the time

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the invention was made to have the ability to adjust the spacing of the magazines, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Fritz with the ability to adjust the spacing of the magazines to allow room for further operations.

In regard to claim 8-11, the modified invention of Fritz discloses the invention substantially as claimed including a endless belt conveyor 10, moving articles 50 to an inlet section and mounted on driving wheels (no number given). Furthermore, while Fritz discloses only one conveyor, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided plural conveyors side by side, since it has been held that mere duplication of the essential working parts of a device requires only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Fritz with plural conveyors for the purpose of increasing throughput.

In regard to claims 12-14, while the modified invention of Fritz does not disclose the different orientation of the conveyors and transfer lines, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the conveyor at the bottom or the transfer line in an longitudinal or angular position, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70. Therefore, it would have been

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obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Fritz with the ability to change conveyor position for the purpose of accommodating a machine in a plurality of configurations.

In regard to claim 15, the modified invention of Fritz discloses the invention substantially as claimed including packaging strip shaped material 50 (see Fig.1)

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fritz and Boscaratto in further view of Stauber et al (US 5,495,700).

The modified invention of Fritz discloses the invention substantially as claimed as applied to claim 1 above except for the use of a pivoting magazine. However, Stauber teaches that it is old and well known in the art to provides a magazine 22 with lateral walls 36 and horizontal folded edges, which swing outward for the purpose of allowing a product to be stacked prior to packaging (see Fig. 1 and C3,L23-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Fritz with the magazine means as taught by Stauber for the purpose of allowing a product to be stacked prior to packaging.

#### ***Allowable Subject Matter***

6. Claims 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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7. Claim 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Moser, O'Brien, Burgis, Akyut, Morita, Podini, Pattarozzi, Mims, Kobayashi, Tanaka and Van Dam have been cited to show devices having similar structure.

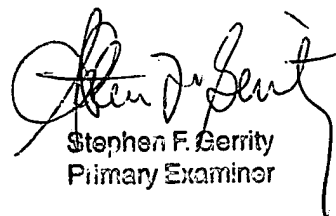
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand  
February 22, 2005



Stephen F. Gerrity  
Primary Examiner